

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

WILLIAM CHARLES BEVAN,

Appellant,

vs.

JANET M. NESSE, Chapter 7 trustee for

WILLIAM CHARLES BEVAN,

Appellee.

Case No. 8:23-cv-01839-DLB
(Appeal from 22-12609-LSS
(Bankr D. Md.))

APPELLEE’S MOTION TO DISMISS APPEAL

Janet M. Nesse, Chapter 7 trustee (the “Trustee” or “Appellee”) for the bankruptcy estate of William Charles Bevan (the “Debtor” or “Appellant”), by and through her undersigned attorneys, McNamee Hosea, P.A., files this *Appellee’s Motion to Dismiss Appeal* (“Motion”), and in support thereof, states as follows.

Appellant commenced an appeal which was transmitted to this Court on July 7, 2023. On July 10, 2023, this Court sent a letter to Appellant stating:

The above-captioned bankruptcy appeal was docketed on July 10, 2023. Briefs must be filed and served in accordance with Bankruptcy Rule 8018. Appellant's brief is due within thirty (30) days from the date the Designation of Record is docketed.

Docket No. 2. The Designation of Record was docketed in this case on July 18, 2023. Local Rule 405(3) states, in pertinent part:

Whenever the appellant fails to serve and file a brief within the time required by Bankruptcy Rule 8018, the District Court may, upon motion of the appellee (to be filed in the District Court) or upon its own initiative, dismiss the appeal after giving the appellant an opportunity to explain the non-compliance and upon considering whether the noncompliance had prejudicial effect on the other parties

Time to Serve and File a Brief. The following rules apply unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits:

L.R. 405(3). Federal Rule of Bankruptcy Procedure 8018 states, in pertinent part:

- (1) The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically....

Fed. R. Bankr. Proc. 8018.

It has been more than thirty days since the record in this case was docketed. The Court may dismiss this case if it is able to (1) make a finding of bad faith or negligence; (2) give the appellant notice and an opportunity to explain the delay; (3) consider whether the delay had any possible prejudicial effect on the other parties; or (4) indicate that it considered the impact of the sanction and available alternatives. *Id.* In re Serra Builders, Inc., 970 F.2d 1309, 1311 (4th Cir. 1992). Pursuant to *Serra Builders*, Appellee requests that this Court give Appellant notice and an opportunity to explain his delay, provide that such explanation be given by October 4, 2023, and if the Court is satisfied with said explanation, provide a deadline to file a brief. Appellee requests that if Appellant does not satisfactorily explain his delay by October 4, 2023, that the Court dismiss this appeal.

WHEREFORE, Appellee respectfully requests that the Court order Appellant to explain his delay by October 4, 2023, and order that the appeal will be dismissed if there is no satisfactory explanation.

[signatures on next page]

Dated: September 20, 2023

Respectfully submitted

/s/ Justin P. Fasano

Janet M. Nesse (Fed. Bar No. 07804)

Justin P. Fasano (Fed Bar No. 28659)

McNamee Hosea, P.A.

6404 Ivy Lane, Suite 820

Greenbelt, MD 20770

Tel: 301-441-2420

Fax: 301-982-9450

jnesse@mhlawyers.com

jfasano@mhlawyers.com

Counsel for the Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 20, 2023, a true and correct copy of the foregoing has been served by first class mail, postage prepaid, to the parties listed below:

Dr. William Bevan
ProMedica Skilled Nursing and Rehab (Manor Care)
11901 Georgia Avenue
Wheaton, MD 20902

/s/ Justin P. Fasano

Justin P. Fasano